

**LOCAL CIVIL RULES OF
THE ALLEN SUPERIOR & CIRCUIT COURT
herein after referred to as COURTS**

Effective November 1, 2000

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LR02-AR00-1 Applicability and Citation of Rules

- (A) **Scope.** The following rules shall apply to cases filed on the plenary docket in the Courts Civil Division, and shall not apply to cases in the Small Claims Division, the Family Relations Division, or the Criminal Division of the Courts. Nothing in these rules shall limit the general jurisdiction of any judge of the Courts Civil Division.
- (B) **Citation.** These rules may be cited as L.R. _____. The Indiana Rules of Trial Procedure are hereinafter referred to as T.R. _____.

Adopted September 8, 2000, effective November 1, 2000.

LR02-TR4-1 Service of Process

- (A) **Procedure for Service of Process**
- (1) *By Mail.* When service by certified mail is requested, the party shall not prepare envelopes, but shall furnish for each party to be served, the originals and three copies of prepared summons, complaints, notices or subpoenas to the Clerk, who shall prepare the envelopes using the addresses furnished. Proper postage and return receipt request card will be furnished by the Clerk. Upon receipt of the return, the Clerk shall insert the return with the pleadings in the packet.
- (2) *By Sheriff.* When Sheriff service is requested, the party shall furnish for each party to be served, the original and three copies of prepared summons, complaints, notices or subpoenas to the Clerk, who will forward the documents to the Sheriff for proper service.
- (B) **Summons and Complaint Served Together – Exceptions.** The summons and complaint shall be served as provided by the Trial Rule 4(E) except as may otherwise be provided by statute or other Trial Rule.

Adopted September 8, 2000, effective November 1, 2000.

LR02-TR3.1-1 Appearances

- (A) **Written Appearance Form.** An attorney entering an appearance on behalf of any party shall file a written appearance as provided in T.R. 3.1 and serve a copy on all parties of record.

- (B) **Filing Appearance.** Appearance shall be filed with the Clerk, who shall file-stamp the same and shall enter the attorney's name and the date of such appearance on the chronological case summary. In addition, the Clerk shall note such attorney's name, address, or box number, and phone number on the chronological case summary. It shall be the duty of attorneys to see that their appearance is properly filed and entered.
- (C) **Party Appearing Without an Attorney.** When a party to an action appears without an attorney, the party shall give, and the Clerk shall note on the chronological case summary of the case, a name, a mailing address and phone number of the party to which notices and communications concerning the case may be delivered and mailed pursuant to T.R. 5 (B).
- (D) **Address Changes.** It shall be the duty of all attorneys who have entered their written appearance and of all parties who are not represented by an attorney, to notify the Court through the Clerk of any change of their mailing addresses and phone numbers. Such notification shall be in writing filed separately for each case to which the change applies and served upon other parties to each case or their attorneys of record.
- (E) **Proof of Mailing.** Certificates of service or proof of mailing of pleadings concerning any case shall be deemed sufficient proof of service if such pleadings were mailed to the last known address of a party or attorney noted upon the chronological case summary of a case.

Adopted September 8, 2000, effective November 1, 2000.

LR02-TR3.1-2 Withdrawal of Appearance

- (A) **Procedure for Withdrawal.** A request to withdraw an appearance shall be in writing and by leave of Court. Permission to withdraw shall be given only after the withdrawing attorney has given his client at least ten (10) days written notice of his intention to withdraw and has filed a copy of such notice with the Court; or upon a simultaneous or prior entering of appearance by counsel for said client. Once a case has been assigned to a judge, no motion to withdraw appearance shall be granted except by the judge to whom the case has been assigned.
- (B) **Contents of Notice.** Any notice of intention to withdraw shall include an explanation to the client as follows:
- (1) the present status of the case.
 - (2) the date or dates of scheduled hearings and any other pending matters;

- (3) advice that the provisions in Local Rule 3C and 3D apply to the client after withdrawal of counsel;
- (4) the expectation of the Indiana common law that, as an unrepresented party, the client will be held to the same standard of conduct as an attorney licensed to practice in the State of Indiana; and
- (5) the prejudice which might result from failure of the client to act promptly or to secure new counsel.
- (6) an attorney, in compliance of T.R. 3.1 (E), shall certify the last known address and telephone number of the party, subject to the confidentiality provisions of T.R. 3.1(A)(8) and (D).

Adopted September 8, 2000, effective November 1, 2000; amended and effective October 1, 2003.

LR02-TR5-1 Consent to Alternate Service

- (A) **Courthouse Boxes.** Any Allen County attorney or any Allen County law firm may, without charge, maintain an assigned Courthouse box in the library of the Allen County Courthouse for receipt of notices, pleadings, process, orders, or other communications from the Courts, the Clerk, and other attorneys or law firms.
- (B) **How Assigned.** Such Courthouse boxes shall be assigned only after such attorney or law firm has filed with the Law Librarian at the Courts a Consent to Alternate Service (Appendix A).
- (C) **Effect of Consent.** Deposits made in any assigned box of notices, pleadings, process, orders, or other communications made shall be deemed to constitute and be accepted as service equivalent to service by first class mail under Trial Rule 6(E).
- (D) **Form of Deposit to Box.** Any papers served under this rule by the Court, Clerk, or other attorneys or firm of attorney shall be placed in an envelope with the name of the intended receiving attorney on it and the current box number on the outside thereof.
- (E) **Revocation of Consent.** Consent to Alternate Service under this rule shall remain valid until a written revocation has been filed with the Law Librarian of the Courts.
- (F) **Index.** An index of those attorneys and firms consenting to alternate service shall be located near the boxes. The Law Librarian of the Courts shall be responsible for assigning boxes and maintaining a file of consents and of revocations of consents to alternate service.

Adopted September 8, 2000, effective November 1, 2000.

LR02-TR8-1 Preparation of Pleadings

All pleadings shall be in accordance with the provisions of the Indiana Rules of Trial Procedure. For the purpose of uniformity and convenience, the following requirements shall also be observed:

- (A) **Form.** Such pleadings must be printed on white paper. The lines shall be double spaced except for quotations, which shall be indented and single-spaced. Handwritten pleadings may be accepted for filing in the discretion of the Court. Photocopies are acceptable if legible.
- (B) **Margins and Binding.** Margins shall be 1-1 ½ inches on the left side and ½ inch on the right. Binding or stapling shall be at the top left and at no other place. Covers or backing shall not be used.
- (C) **Signature.** All pleadings to be signed by an attorney shall contain the written signature of the individual attorney, the attorney's printed name, Supreme Court Attorney Number, the name of the attorney's law firm, the attorney's address, telephone number, and a designation of the party for whom the attorney appears.

The following is recommended:

John Doe, #284-703
Doe, Rowe and Smith
2222 Blackburn Building
Fort Wayne, Indiana 46802
(260) 555-1212
Attorney for Defendant

Neither printed signatures, nor facsimile signatures shall be accepted on original documents. Facsimile signatures are permitted on copies.

Adopted September 8, 2000, effective November 1, 2000.

LR02-TR77-1 Filing

- (A) **Flat Filing.** The files of the Clerk of the Court shall be kept under the "flat filing" system. All pleadings presented for filing with the Clerk or Court shall be flat and unfolded. Only the original of any pleading shall be placed in the Court file.
- (B) **Filing Pleadings, File-Stamped Copies.** A copy of any pleading required to be served under Trial Rule 5 upon counsel of record or the adverse party shall be file-stamped.

Adopted September 8, 2000, effective November 1, 2000.

LR02-TR59-1 Default Judgments

- (A) **Written Instruments.** Where a case is based on a written negotiable instrument, the original of the instrument must be produced for cancellation when obtaining judgment thereon. If the only instrument produced is a photocopy including the photocopy of the signature of the defendant, an affidavit by plaintiff that the original of such instrument cannot be found or produced shall be filed before judgment will be issued thereon.
- (B) **Application for Judgment.** Where an appearance has been entered for a party, the party entitled to a judgment shall file an "Application for Judgment" pursuant to Trial Rule 55(B). The movant will set the application for hearing and give notice of such application and hearing on the party's attorney who is in default.
- (C) **Affidavit of Non-Military Service.** No default judgment shall be entered unless there has been filed an affidavit or other evidence, satisfactory to the Court, of non-military service.

Adopted September 8, 2000, effective November 1, 2000.

LR02-TR7-1 Motions in Civil Court

- (A) **Setting Motions for Hearing.** Except for the motions described in L.R. 9E below, all motions shall be set for hearing at the time of their filing. It shall be the responsibility of the moving party to secure the date of such hearing from the Judicial Assistant/Duty Clerk, or if the case has already been assigned to a Judge, from the Judicial Law Clerk of the assigned Judge.
- (B) **Motions to Correct Error.** It shall be discretionary with the Judge before whom the case is pending whether a hearing shall be held on a motion to correct error.
- (C) **Motions to Tax Costs.** All motions to tax costs must be made in writing specifically setting forth the reasons therefore and the proposed mode of taxation. All such motions shall be set for hearing, with notice to the adverse party, as prescribed in 9.A. above.
- (D) **Motions to Amend Pleadings.** All motions to amend pleadings shall contain a written representation of the moving party's attorney that said attorney advised opposing counsel of the substance of the motion and that opposing counsel either

consents or objects to the motion or that the motion may be submitted for ruling by the Court without hearing or briefing. Upon being advised of opposing counsel's objection, the moving party's attorney shall set the motion for hearing, as prescribed in 9.A. above.

(E) **Motions Not Likely to Require Hearing.** At the time of filing, the following motions, along with the court packet, shall be brought to the attention of the Judicial Assistant of the Civil Division.

- (1) Motion for Enlargement of Time
- (2) Motion to Dismiss complaint by Plaintiff when no answer has been filed
- (3) Motion to Dismiss Counterclaim by Defendant when no reply has been filed
- (4) Motion to amend any pleading

Such motions shall be summarily granted or denied *ex parte* unless the assigned Judge, determines that a hearing should be scheduled.

(F) **Briefs and Memoranda Regarding Motions.** If a party desires to file a brief or memorandum in support of any motion, such brief or memorandum shall be filed simultaneously with the motion, and a copy shall be promptly served upon the adverse party.

(G) **Motions to Strike or to Insert New Matter.** Subject to Trial Rule 12(F), every motion to insert new matter or to strike out any part or parts of any pleading, deposition, report, order or other document in a case shall be made in writing and shall set forth the words sought to be inserted or stricken. Each set of words to be inserted or stricken shall be in a separate specification and each specification shall be numbered consecutively.

(H) **Motions to Reconsider Rulings.** A motion to reconsider a ruling of the Court on any pleading or motion must be in writing and must be served personally upon the ruling Judge. If a motion to reconsider is set for hearing by the Judicial Assistant/Duty Clerk or by the Judicial Law Clerk of the assigned Judge, the five (5) day automatic denial time period contained in T.R. 53.4 shall not apply.

(I) **Discovery Dispute Motions.** The Court expects complete compliance with T.R. 26(F).

(J) **Responsibility for Notice.** It shall be the responsibility of the moving party to give notice to all other parties of hearings scheduled on motions.

LR02-TR00-1 Proposed Orders

(A) **Matters in which Proposed Orders Required.** Prior to entry by the Court of orders granting motions or applications, the moving party or applicant (or his or her attorney) shall, unless the Court directs otherwise, furnish the Court with proposed orders in the following matters:

- (1) for enlargement of time
- (2) for continuance
- (3) for default judgment
- (4) to compel discovery
- (5) of dismissal
- (6) for appointment of receiver
- (7) for appointment of guardian
- (8) for restraining order, temporary, or permanent injunction
- (9) for immediate possession of real estate
- (10) for immediate possession of personal property
- (11) for findings of fact and conclusions of law
- (12) for petition for certification of interlocutory appeals
- (13) for staying further proceedings by reason of bankruptcy, appeal, or other cognizable grounds
- (14) such other orders, judgments, or decrees as the Court may direct

This rule does not apply to judgments on general verdicts of the jury or upon a decision announced by the Court.

(B) **Form.** Any proposed order shall be a document that is separate and apart from the motion or application to which it relates and shall contain a caption showing the name of the court, the case number assigned to the case and the title of the case as shown by the complaint. If there are multiple parties, the title may be shortened to include only the first name plaintiff and defendant with appropriate indication that there are additional parties. The proposed order shall be on white paper, 8 ½" x 11" in size, and each page shall be numbered. On the last page of the proposed order there shall be a line for the signature of the judge under which shall be typed "Judge, Courts", to the left of

which shall be the following: "Dated _____". To allow space for the Clerk to make entries on the proposed order to show compliance with the notice requirements of TR 72(D), the lower 4 inches of the last page of the proposed order shall be left blank. The proposed order shall also include a prepared proof of notice, under T.R. 72(D). The proof of notice shall conform to the following format:

NOTICE IS TO BE GIVEN BY:

___ COURT ___ CLERK ___ PARTY ___ OTHER

PROOF OF NOTICE UNDER TRIAL RULE 72 (D)

A copy of this entry was served either by mail to the address of record, deposited in the Court's attorney's distribution box, distributed personally upon the persons and/or filed as listed below:

Insert Name and address or
court's attorney distribution box
number, of all Pro Se Parties and
Attorneys of Record.

Court Packet – 2

DATE OF

NOTICE: _____

INITIALS OF PERSON WHO

NOTIFIED PARTIES:

___ COURT ___ CLERK ___ PARTY ___ OTHER

NOTE: When a party provides notice under this section said party shall complete all portions of the prepared proof of notice.

- (C) **Copies.** All proposed orders shall be submitted in an original plus a number of copies equal to one more than the number of pro se parties and attorneys of record contained in the prepared proof of notice under T.R. 72 (D) required above.
- (D) **Proposed Orders on Motions for Summary Judgment.** Proposed orders on motions for summary judgment may contain the language called for in T.R. 56 (C) that there is not just reason for delay and directs entry of final judgment as to less than all the issues, claims or parties.

LR02-TR53.1-1 Failure to Rule –Informal Procedure

In the event a Judge fails to set a motion or hearing or fails to rule on a motion within the time period specified in Trial Rule 53.1(A), and if no action has been taken as provided in Trial Rule 53.1(D) or (E), an interested party may seek that an informal resolution be attempted as to such Judge's failure through *ex parte* request made to the Administrative Judge of the Civil Division or the Court Executive of the Courts.

Adopted September 8, 2000, effective November 1, 2000.

LR02-TR53.5-1 Continuances Civil

- (A) **Motion.** Motion for continuance, unless made during trial, shall be in writing, state with particularity the grounds and be verified, with copies of such requests served upon opposing counsel unless the Court directs otherwise.
- (B) **Party to Suit Signing Requirement.** The Court, in its discretion, may require any written motion or stipulation for continuance to be signed by the party requesting the continuance in addition to signature of attorney so moving.
- (C) **By Stipulation of Counsel.** Stipulation to continue the hearing of any pending matter shall state with particularity the grounds for the continuance and be signed by all attorneys of record.
- (D) **Time for Filing.** Motions or Stipulations for Continuance shall be filed as soon after the cause for continuance or delay is discovered by the party seeking same, and no later than seven (7) days before date set, unless the reason therefor is shown by affidavit to have occurred within said seven (7) day period.
- (E) **Court's Discretion.** The Court in its discretion may grant or deny a motion or stipulation for continuance.
- (F) **Rescheduling.** All matters continued shall be rescheduled to an open date and time on the Court's calendar when all attorneys will be available.

Adopted September 8, 2000, effective November 1, 2000.

LR02-AR00-2 Assignment of Cases to Judges

- (A) The Administrative Judge of the Civil Division shall assign case types within the Division on an annual basis pursuant to I.C. § 33-5-5.1-23.
- (B) In addition to the assignments under L.R. 13(A), the Administrative Judge or his/her designee may assign cases to a particular Judge upon filing. After a case has been assigned to a particular Judge, all matters pertaining to that case shall be heard and determined by the assigned Judge.
- (C) At the time of filing, the Administrative Judge may also set a Scheduling Conference. Notice of the Scheduling Conference will be included with the pleading served with the summons in the case.
- (D) **Unassigned Cases.** Prior to assignment of the case to a particular Judge, any matter in the case may be scheduled for hearing or disposition before any of the Judges of the Civil Division.

Adopted September 8, 2000, effective November 1, 2000.

LR02-TR00-2 Admissions, Stipulations and Agreements

Admissions, stipulations and agreements concerning the proceedings in a case will not be enforced, unless submitted in writing or made of record.

Adopted September 8, 2000, effective November 1, 2000.

LR02-AR00-3 Retrieval/Destruction of Exhibits

After a case is decided and no appeal is timely taken, or after the applicable retention period under State Law, the court reporter may give notice in writing to the party or party's attorney who introduced an exhibit at trial specifying a time within which the exhibit must be removed from the custody of the court reporter. If the party or attorney does not retrieve the exhibit within the time indicated, the reporter may dispose of same and the party shall be charged with any expenses of disposition.

Adopted September 8, 2000, effective November 1, 2000.

LR02-TR00-3 Attorney's Fees

(a) No order granting a request for attorney fees shall be made unless such fees are allowable under applicable law and there has been evidence furnished by testimony of an attorney, or by affidavit of an attorney. Such testimony or affidavit shall describe the services rendered in order to establish to the Court's satisfaction the amount of time expended (or to be expended in the matter), the fact that such services and time were or are reasonably necessary considering the nature and complexity of the matter, the experience or expertise of the attorney seeking an attorney fee award, the usual and customary charges, and the reasonableness of the fees sought.

Judicial notice of reasonable fees shall not be taken. In any event, the award of attorney fees shall be within the sound discretion of the Court.

Adopted September 8, 2000, effective November 1, 2000.

LR02-TR69-1 Proceedings Supplemental

- (A) **Ten-Day Rule.** Except for good cause shown, a motion for proceedings supplemental may not be filed until ten (10) calendar days have elapsed since the date of judgment.
- (B) **One-Year Rule.** Except upon good cause shown, no proceedings supplemental may pend for more than one (1) year period from the date of its filing. At the end of said one (1) year period, said proceedings supplemental shall be dismissed. Except upon good cause shown, no judgment creditor may file more than four (4) proceedings supplemental per year against any individual judgment debtor in a given case.
- (C) **Bank Interrogatories.** Except by order of the Court for good cause shown, judgment creditors may not submit garnishment interrogatories to more than two (2) banking institutions for each hearing on proceedings supplemental.
- (D) **Conduct of Hearings.** Unless the judgment creditor is represented by an attorney at the proceedings supplemental hearing, said hearing shall be conducted by an officer of the Court.

- (E) **Completion of Interview Forms.** At each proceedings supplemental hearing, the attorney or the Court's officer conducting the hearing shall complete and file with the Court a proceedings supplemental interview form provided by the Court based on the judgment debtor's testimony at said hearing. At its completion and prior to its filing, the judgment debtor shall be given the opportunity to review and sign said form in acknowledgement of its accuracy.
- (F) **Proceedings Supplemental During Pendency of Garnishment Order.** If a garnishment order has been issued and remains unsatisfied, additional proceedings supplemental directed to the judgment debtor or to an additional garnishee defendant may be filed only by order of the Court for good cause shown.
- (G) **Default on Proceedings Supplemental.** The Court shall permit each party a thirty (30) minute grace period to appear for any proceedings supplemental hearing. After the thirty (30) minute grace period has elapsed:
- (1) if the judgment debtor has failed to appear, a judgment creditor who appears shall be entitled to apply for appropriate proceedings supplemental sanctions; or
 - (2) if the judgment debtor has appeared within the grace period and the judgment creditor or his attorney fails to appear or to commence to conduct the proceedings supplemental interview, the judgment debtor may leave without risk of sanction for failure to appear.

However, a judgment creditor's failure to conduct the proceedings supplemental interview within the grace period shall not bar the judgment creditor from filing a garnishment order against the judgment debtor's wages if appropriate under Local Rule 20.

Adopted September 8, 2000, effective November 1, 2000.

LR02-TR69-2 Court Orders to Appear

- (A) **General Use.** Judgment creditors may request the Court to issue an order to appear (COTA) to judgment debtor(s) only when:
- (1) an active proceedings supplemental is pending against the judgment debtor;
 - (2) the hearing date set for the COTA is within sixty (60) days of the date on which the COTA is issued; and
 - (3) good cause exists for the COTA and is shown on the

record at the time the COTA is requested.

- (B) **Good Cause.** “Good cause” under Local Rule 18A(3) shall include but not be limited to cases in which:
- (1) the judgment debtor fails to produce documents as previously ordered by the Court;
 - (2) the judgment debtor indicates intended relocation with new address presently unknown;
 - (3) there is a reasonable certainty that the judgment debtor’s financial status will substantially change within sixty (60) days.
- (C) **COTA’s and Garnishment Orders.** When a garnishment order has been issued, no pending COTA will be enforced, and no COTA will issue to the judgment debtor, except by order of the Court for good cause shown.
- (D) **Failure to Appear on COTA.** Upon a judgment debtor’s failure to appear on the date and time set by the COTA, the judgment creditor may file contempt proceedings under Local Rule 19.
- (E) **Agreements to Appear Without COTA.** In any proceedings supplemental, the parties may agree to reset a hearing without use of a COTA. If after such agreement either party fails to appear at the reset hearing, the underlying proceedings supplemental shall be dismissed and no sanctions shall be available for such failure to appear.

Adopted September 8, 2000, effective November 1, 2000.

LR02-TR69-3 Contempt/Rule to Show Cause/Body Attachment

- (A) **Contempt.** Upon failure of a judgment, debtor or garnishee defendant to appear as ordered for a scheduled hearing, the judgment creditor may file a contempt citation as to said person. Said contempt citation must be filed within thirty (30) days of the failure to appear.
- (B) **Body Attachment.** Body attachment shall be requested and issued only when:
- (1) The judgment debtor or garnishee defendant previously ordered to appear for a scheduled hearing was personally served with notice of a contempt hearing;
 - (2) The request for body attachment is filed within thirty (30) days of the contempt hearing at issue; and
 - (3) The judgment creditor properly completes and files all

pleadings and forms from time to time required by the Court. Said pleadings and forms currently include for each judgment debtor:

- (a) one (1) Request for Body Attachment;
- (b) at least three (3) Writs of Attachment which must include a statement setting a bond for release; (The bond amount should be set at the lesser of \$500.00 or the total amount remaining unpaid on the judgment including costs and interest.)
- (c) and the Warrant Information Card, including the judgment debtor's social security number or date of birth.

(C)

Procedure for Contacting Judgment Creditor When Attached Person is in Custody.

When the judgment creditor under Local Rule 19 requests the issuance of a body attachment, and as needed at any time thereafter, said creditor shall file with the Court any telephone numbers (not to exceed three (3)) at which the Court may notify the creditor of the attached person's appearance in custody. Upon such appearance in custody, the Court, to the best of its ability and consistent with the continued performance of its daily responsibilities shall:

- (1) attempt to contact the creditor at the telephone numbers on file with the Court; and
- (2) thereby notify the creditor of a time later during the same Court business day at which the attached person will be brought before the Court for questioning by said creditor.

If the Court is unable to contact the judgment creditor as set forth above after attempting to do so for a period of two (2) hours, the attached person shall be released and the underlying proceedings supplemental dismissed.

(D)

Expiration and Recall of Body Attachments.

- (1) *Expiration.* Body Attachments expire one year after issuance.
- (2) *Recall.* If during the pendency of a Body Attachment, the judgment creditor desires to recall said body attachment, said judgment creditor shall;
 - (a) appear personally or by attorney and move on the record for recall of the Body Attachment; and
 - (b) state on the record the reason for the desired recall.

Upon the recall of a Body Attachment, the underlying proceedings supplemental shall be dismissed.

Adopted September 8, 2000, effective November 1, 2000.

LR02-TR69-4 Garnishment

(A) **General Procedure.** A garnishment order shall not issue with respect to a judgment debtor's wage or other property without:

- (1) An active proceedings supplemental as to the judgment debtor or waiver of notice by said judgment debtor;
- (2) Service on the garnishee defendant of the proceedings supplemental by
 - (a) certified mail,
 - (b) Sheriff's service, or
 - (c) private process server; and
- (3) return of answered interrogatories, other verification of employment by the garnishee defendant, or failure to answer interrogatories after notice.

(B) **Voluntary Garnishments.** In instances where a judgment debtor has entered a voluntary agreement for periodic payments to satisfy the judgment and has further consented to garnishment upon default, notwithstanding the terms of the agreement, no garnishment order shall issue unless:

- (1) an active proceeding supplemental is pending against the judgment debtor and the garnishee defendant;
- (2) the judgment debtor's employment by said garnishee defendant has been verified as set forth in Local Rule 20 (A) on the record within three (3) months prior to the date on which judgment creditor requests issuance of the garnishment order; and
- (3) the judgment creditor represents on the record the default of judgment debtor.

(C) **Stay.** In instances where a judgment creditor has stayed a garnishment order which has been issued and served on a garnisheed defendant, said judgment creditor shall lose any priority over pending, but later issued, garnishment orders pertaining to the judgment debtor's wages.

- (D) **Release.** Upon receipt by the judgment creditor or by the Clerk on the judgment creditor's behalf of monies sufficient to fully satisfy the judgment, any accrued interest and costs, the judgment creditor shall immediately obtain a court order releasing the applicable garnishment order and shall forward a copy to the garnishee defendant(s).

Adopted September 8, 2000, effective November 1, 2000.

LR02-AR00-4 Authority of Attorneys' Employees

- (A) **In General.** Generally, attorneys' employees who have not been admitted to practice law in Indiana but who assist their employers in Courthouse activities (herein called "legal assistants"), shall be limited to the performance of tasks which do not require the exercise of legal discretion or judgment that affects the legal rights of any person.
- (B) **Trust Account Deposits.** Only one legal assistant per law firm shall have the authority to obtain trust account deposits at the Allen County Clerk's Office in the name of his or her employer firm. The employer law firm shall submit a letter to the Clerk of the Allen Circuit and Superior Courts (See Appendix "B" to these rules) stating that:
- (1) Such employee is authorized to obtain trust account deposits at the Allen County Clerk's Office in the name of his employer; and
 - (2) Such employer fully releases the Clerk of the Allen Circuit and Superior Courts and all employees of said Clerk of any liability for paying any such funds by check, naming said employer as payee, to any such designated employee, unless such law office has previously notified in writing the Clerk of the Allen Circuit and Superior Courts that such employee's authority to act on behalf of said law office has been terminated.
- (C) **Legal Documents.** All pleadings which the legal assistant presents or files at the Courthouse must contain an attorney's signature, as the attorney for a party, or a statement affixed indicating that the documents were prepared by said attorney.
- (D) **Permitted Acts.** Such an employee shall be limited to the following acts:
- (1) To file, and obtain orders on all motions described in Local Rule 10(A).

- (2) To set Pre-Trial Conferences and all other hearing dates except trials.
- (3) To examine pleadings and chronological case summary sheets and make copies thereof within the Courthouse.
- (4) At the discretion of the Court, to obtain approval of orders of the Court from the Judge's Law Clerk for:
 - (a) Notice of hearings.
 - (b) Orders to appear and answer interrogatories on the

filing of the Verified Motion for Proceedings Supplemental.

- (c) Stipulations signed and approved by all parties of record.
- (d) Motions to Withdraw Appearance.

(E) **Acts Not Permitted.** Such employee shall not have the authority to perform any acts not specified in Paragraph D of this rule.

(F) **Termination of Authority.** Each employer law firm shall be responsible for notifying in writing the Clerk of the Allen Circuit and Allen Superior Court, and the Courts Executive of the termination or revocation of any legal assistant's authority to act on behalf of said law office as covered by this rule.

Adopted September 8, 2000, effective November 1, 2000 .

LR02-AR00-5 Conflicts

The Indiana Rules of Trial Procedure shall govern in the event of any conflict with the Local Rules of the Courts, Civil Division.

Adopted September 8, 2000, effective November 1, 2000.

APPENDIX A

CONSENT TO ALTERNATE SERVICE

The undersigned, as an individual practitioner or for and on behalf of the law firm below, hereby consents to service of any notice, pleading, process, order or other communication by deposit of the same in an assigned Courthouse box by:

- (a) Allen Superior Court or Allen Circuit Court
- (b) Clerk, as to matter with Allen Superior Court or Allen Circuit Court;
- (c) Other Attorneys and law firms.

“Deposit” pursuant to this Consent shall constitute and be accepted as 1st class mail under Trial Rule 6(E). Any papers served under this Consent shall be placed in an envelope with the name of receiving attorney and current box number on the outside thereof. The Consent shall remain valid until revoked in writing. The Consent or revocation will be effective upon filing with the Law Librarian of Courts.

This Consent shall also apply to any attorneys who become associates with the undersigned law firm after the date of this consent.

The undersigned agree(s) to notify the Allen Superior Court Executive or Allen Circuit Court Executive promptly of any changes in the list of attorneys designated in the Consent.

DATED: _____

(Individual Practitioner)

(Firm Name)

By:

Managing or Senior Partner

List of Attorneys in Law Firm Hereby Consenting:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

(File with the Law Librarian in the Allen County Courthouse.)

Adopted September 8, 2000, effective November 1, 2000.

APPENDIX B

RELEASE OF CLERK FOR PAYMENT OF TRUST ACCOUNT DEPOSITS TO THE CLERK OF THE ALLEN COUNTY SUPERIOR AND CIRCUIT COURTS

Please be advised that _____, an employee of our law firm, is authorized to obtain trust account deposits at the Allen County Clerk's office in the name of his/her employer. The law firm fully releases the Clerk of the Allen Superior and Circuit Court and all employees, of said Clerk for paying any such funds by check, naming said employer as payee to above named employee, unless we have previously notified you in writing that such employee's authority to act on behalf of our law office has been terminated.

Law Firm Of: _____

By: _____
Attorney Name and #

STATE OF INDIANA, COUNTY OF ALLEN, SS:

Subscribed and sworn to before me, a Notary Public in and for said County and State,

this _____ day of _____, 20 ____.

My Commission Expires: _____

Notary Public

Adopted September 8, 2000, effective November 1, 2000.

APPENDIX C

FINAL PRE-TRIAL ORDER

STATE OF INDIANA)

)

)

COUNTY OF ALLEN)

)

PLAINTIFF _____)

)

vs.)

)

)

)

)

DEFENDANT _____)

IN THE COURTS

SS:

CASE NUMBER:

FINAL
PRE-TRIAL ORDER

The parties submit this FINAL PRE-TRIAL ORDER:

- A. Jurisdiction.
- B. Status of the Record.
- C. Motions.
- D. Discovery.
- E. Contested Issues.
- F. Stipulations. (e.g. facts, liability, damages, admissibility of dispositions, capacity of parties.)
- G. Contentions of the Plaintiff(s).
- H. Contentions of the Defendant(s).
- I. Exhibits.
 - (1) Plaintiff(s) exhibits may include any or all of the following: (which have been numbered and submitted to Defendant(s) for examination):
 - (2) Defendant(s) exhibits may include any or all of the following: (which have been lettered and submitted to Plaintiff(s) for examination):
 - (3) The authenticity of all exhibits has been stipulated except the following:
 - (4) The relevancy and materiality of all exhibits has been stipulated except for the following:
- J. Witnesses.

- (1) The names, addresses and telephone numbers of Plaintiff(s) witnesses are as follows:
- (2) The names, addresses and telephone numbers of Defendant(s) witnesses are as follows:

K. **Order.**

- (1) Reasonable opportunity has been afforded counsel for corrections or additions prior to approval and signing by the Court. Subject to any corrections and additions that may be made as a result of the Status Conference with the Court, this Pre-Trial Order when filed with and approved by the Court before the commencement of the trial, shall control the course of the trial and may not be amended except by order of Court to prevent manifest injustice. All pleadings shall be deemed to be merged herein.

L. **Settlement.**

The parties have discussed settlement and are prepared to discuss the status of settlement negotiations with the Court.

M. **Trial.**

The trial will be to (Court) a (Jury). Length of the trial is ____ day(s). The Court has set the trial for _____.

Plaintiff(s)

By: _____

Defendant(s)

By: _____

Approved and made an Order of the Court, dated: _____

Judge

Adopted September 8, 2000, effective November 1, 2000.

**LOCAL CRIMINAL RULES OF
THE ALLEN SUPERIOR & CIRCUIT COURT
herein after referred to as COURTS**

Effective January 1, 1995

Rule	
<i>LR02-TR81-1</i>	Scope of the Rules
<i>LR02-CR2.1-1</i>	Court Appearances
<i>LR02-CR00-1</i>	Appointed Counsel
<i>LR02-CR2.1-2</i>	Appearance of Counsel
<i>LR02-TR3.1-3</i>	Withdrawal of Counsel
<i>LR02-CR10-1</i>	Initial Hearing and Plea
<i>LR02-TR00-4</i>	Trial Setting
<i>LR02-CR10-2</i>	Trial
<i>LR02-TR51-1</i>	Jury Instructions
<i>LR02-TR7-2</i>	Motions in Criminal Court
<i>LR02-TR53.5-2</i>	Continuances Criminal
<i>LR02-CR00-2</i>	Failure to Appear
<i>LR02-TR26-1</i>	Pre-Trial Discovery
<i>LR02-CR00-2</i>	Motion to Sequester
<i>LR02-TR00-5</i>	Stipulations
<i>LR02-TR16-1</i>	Pre-Trial Conference
<i>LR02-TR47-1</i>	Selection of a Jury Panel
<i>LR02-CR00-3</i>	Special Procedures for Misdemeanor and Traffic Division
<i>LR02-TR00-6</i>	Procedure not Otherwise Specified
<i>LR02-TR00-7</i>	Service of Notice of Appeal

LR02-TR81-1 Scope of the Rules

These rules are adopted pursuant to the authority of Indiana Rules of Trial Procedure, T.R. 81, and are intended to supplement those rules as well as the Indiana Rules of Criminal Procedure. They shall govern the practice and procedure in all cases in the Courts, Criminal Division, and shall be construed to secure the just, speedy and efficient determination of every action.

Adopted effective January 1, 1995.

LR02-CR2.1-1 Court Appearances

- (A) If an arrested person is released from custody or admitted to bail prior to his first court appearance, he shall personally appear in court forthwith or at such other time as competent authority may direct.
- (B) Upon the first appearance of the defendant, the court shall inform the defendant of the charge pending against him and of his rights as required by IC 35-33-7-5.
- (C) The court may allow the defendant reasonable time and opportunity to consult counsel.
- (D) The court may admit the defendant to bail as provided by law, or by court rule or order.
- (E) The court shall fix a time for the defendant's next court appearance which shall be the omnibus hearing unless otherwise ordered.
- (F) In all felony cases, the defendant is required to appear personally for appointment of counsel, waivers of right, initial hearing, omnibus hearing, plea, trial setting, trial, and such other times as the court may direct.
- (G) In all misdemeanor cases, the defendant is required to appear personally at the initial hearing, guilty plea, waivers of right, unless a written waiver is provided, and jury verification.

Adopted effective January 1, 1995.

LR02-CR00-1 Appointed Counsel

- (A) A defendant, who is financially unable to obtain counsel, and who is not charged with an infraction or ordinance violation, is entitled to appointed counsel in accordance with this rule.
- (B) If a defendant states that he is financially unable to obtain counsel, the court shall cause the defendant's financial

circumstances to be investigated.

- (C) If the court's investigation reveals that the defendant is indigent, the court shall appoint the Allen County Public Defender to represent the defendant.
- (D) Notwithstanding the provisions of this rule, the court may, in the interest of justice, appoint counsel for any person at any stage of any proceedings.

Adopted effective January 1, 1995.

LR02-CR2.1-2 Appearance of Counsel

- (A) Any attorney representing a defendant shall appear for such defendant immediately upon being retained or appointed, by signing and filing an appearance in writing with the court containing his name, attorney number, address and telephone number and shall serve a copy of said appearance on the Deputy Prosecuting Attorney assigned to the cause or to the office of the Prosecuting Attorney.
- (B) At such time as the Office of the Prosecuting Attorney assigns a case to a Deputy Prosecuting Attorney, that Deputy Prosecuting Attorney shall file a written appearance in the same form as set out above, and shall serve a copy of the appearance on counsel for the defendant.

Adopted effective January 1, 1995.

LR02-TR3.1-3 Withdrawal of Counsel

- (A) Permission of the court is required to withdraw the appearance of counsel for a defendant. IC 35-36-8-2 shall govern the granting of such permission.
- (B) Counsel desiring to withdraw their appearance shall notify the defendant of such intention, in writing, not less than ten (10) days prior to the counsel's filing of such motion. Counsel shall further send notice of the filing of said motion to the defendant, which notice shall indicate the date, time and place of said hearing. It shall be sent by first class mail and shall inform the defendant of the necessity to be present. A copy of said notice shall be attached to counsel's Motion to Withdraw. No withdrawal of appearance shall be granted unless said procedure is followed.

Adopted effective January 1, 1995.

LR02-CR10-1 Initial Hearing and Plea

- (A) Initial hearings shall be conducted pursuant to and in accordance with IC 35-33-7-5 et seq.
- (B) Guilty pleas shall be conducted pursuant to and in accordance with IC 35-35-1-1 et seq.
- (C) All guilty pleas with a plea agreement must be finalized and a plea entered not later than 1:30 p.m. of the last business day prior to the jury trial date. No plea agreement will be considered by the court after that date. The court will deny all requests for a continuance based on the need for further plea negotiations.

Adopted effective January 1, 1995.

LR02-TR00-4 Trial Setting

Setting of trials on the same date with different Judges is prohibited. Multiple settings for the same trial date with the same Judge is allowed.

Adopted effective January 1, 1995.

LR02-CR10-2 Trial

- (A) If the defendant pleads not guilty, the court shall determine whether a jury trial is waived and shall fix a time for the trial. The date of trial shall be fixed at such time as will afford the defendant a reasonable opportunity for preparation and for representation by counsel if desired.
- (B) A verbatim record shall be taken in all trials.

Adopted effective January 1, 1995.

LR02-TR51-1 Jury Instructions

- (A) All requests for jury instructions tendered in accordance with Criminal Rule 8 and Trial Rule 51 of the Indiana Rules of Trial Procedure must be submitted to the court, with citations of authority, not later than the day prior to the trial. Parties are encouraged to utilize the Indiana Pattern Jury Instructions wherever possible.
- (B) Exceptions to this requirement will be made only when the matters on which the instruction is sought could not have been reasonably anticipated in advance of the trial. Proposed instructions need not be exchanged by counsel until after the evidence has been submitted.

Adopted effective January 1, 1995.

LR02-TR7-2 Motions for Criminal Court

- (A) The Court encourages the early filing of motions so that they can be ruled upon prior to the day of trial.
- (B) An application to the court for an order shall be by motion. A motion other than one made during the trial or hearing shall be in writing. Unless otherwise provided by law or rule, only the original copy of a motion need be filed. It shall state the grounds upon which it is made and set forth the relief or order sought. It may be supported by affidavit. It shall be accompanied by a memorandum of law in support thereof. It shall be signed by an attorney of record or the defendant personally and shall clearly identify the name, attorney number and address of any attorney filing the same. A rubber stamp or facsimile signature on the original copy shall not be acceptable.
- (C) All motions requiring a hearing before the court shall be set on the court calendar by the moving party after first consulting with opposing counsel. Any motion requiring a hearing before the court which is not set for hearing on the court calendar by the moving party shall be summarily denied.
- (D) A proposed form of order shall accompany all motions.

Adopted effective January 1, 1995.

LR02-TR53.5-2 Continuances Criminal

Upon motion of any party, the court may grant a continuance only upon a showing of good cause and only for so long as necessary, taking into account not only the request or consent of the prosecution or defendant, but also the public interest in the prompt disposition of the case. All motions seeking a continuance shall be heard by the court and shall therefore be set for hearing in accordance with Rule 10(C) above.

Adopted effective January 1, 1995.

LR02-CR00-2 Failure to Appear

If a defendant fails to appear before the court when summoned or otherwise ordered by the court to appear, the court may summarily issue a warrant for his immediate arrest and appearance before the court.

Adopted effective January 1, 1995.

LR02-TR26-1 Pre-Trial Discovery

In all felony cases, the court has entered the following General Order concerning pre-trial discovery:

- (A) The State shall disclose to the defendant the following material and information on or before thirty (30) days following the Initial Hearing.
 - (1) The names and last known addresses of persons whom the State may call as witnesses, together with
 - (a) their relevant written or recorded statements;
 - (b) memoranda containing substantially verbatim reports of their oral statements (if any memoranda exist);
 - (c) memoranda reporting or summarizing oral statements (if such memoranda exist);
 - (d) a brief statement indicating the nature of each witness' involvement in the case; such statements may be no more than a reference to statements described in paragraphs (A)(1), (a), (b), or (c) above.
 - (2) Any written or recorded statements and the substance of any oral statements made by the accused or by a co-defendant, and a list of witnesses to the making and acknowledgement of such statements.
 - (3) A transcript of the recorded grand jury testimony of persons whom the prosecuting attorney may call as witnesses at a hearing or trial. A typed transcript of said testimony shall be provided if it is available.
 - (4) Any reports or statements of experts, made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments or comparisons.
 - (5) Any books, papers, documents, photographs, or tangible objects which the prosecuting attorney intends to use in the hearing or trial or which were obtained from or belong to the accused, together with the location of such items and an indication of appropriate means for defense counsel's examination of same. Under circumstances where chain of custody issues are readily apparent, such as drug cases, such chain shall be provided to the extent available on the disclosure date provided above and shall be supplemented:
 - (a) upon defendant's written request;

- (b) by pre-trial conference; and
 - (c) thereafter as ordered to complete such chain.
- (6) Any record of prior criminal convictions which may be used for impeachment of the persons whom the State intends to call as witnesses at the hearing or trial.
- (7) A copy of any written agreement and the complete substance of any oral agreement made by the State with
 - (a) any witnesses to secure their testimony or
 - (b) any co-defendant or other person charged arising out of the same incident.
- (8) Any evidence which tends to negate the guilt of the accused as to the crime charged or tends to reduce the class of the act alleged or which would tend to mitigate his punishment.
- (9) Evidence of other crimes which the State intends to use at trial, pursuant to Rule 404, Indiana Rules of Evidence.
- (10) Newly discovered material within the above categories shall be provided to opposing counsel as soon as reasonably possible following discovery of same.
- (B) (1) The State shall perform these obligations in any manner mutually agreeable to the Prosecutor's Office and to defense counsel. The State shall provide legible copies of existing written statements described in paragraphs (A)(1), (2), (3), and (7). Other items shall be provided for examination, testing, copying, photographing, or other proper use either by agreement or at specified reasonable times and places. Defense counsel shall provide reasonable notice of such examination and shall schedule these examinations in cooperation with the State. An application to the court shall be made to obtain copies of audio or videotape. Said application shall state in specific terms the necessity for such copies.
- (2) The State shall make a record of compliance with this order not more than five (5) days after the date set out in paragraph (A) above by filing with the court:
 - (a) its witness list together with the statement described in (A)(1)(d);
 - (b) a suitable description of memoranda and items provided, but not necessarily by providing copies of all such items to the court; and

- (c) an indication of arrangements made for inspection, if any.
- (C) Subject to constitutional limitations, and not later than thirty (30) days following the date that the State has provided to the defense the information required under this rule, defense counsel shall inform the State of any defense which counsel intends to present at a hearing or trial and shall furnish the State with the following information within counsel's possession and control:
 - (1) The names, last known addresses, dates of birth and social security numbers of persons defense counsel intends to call as witnesses.
 - (2) Any books, papers, documents, photographs, or tangible objects which are intended to be used at a hearing or trial.
- (D)
 - (1) The defense shall perform these obligations in any manner mutually agreeable to the Prosecutor's Office and to defense counsel. Defense shall provide the same documents in a fashion similar to the State's obligations described in (B)(1).
 - (2) The defense shall make a record of compliance with this order not more than five (5) days after the date set out in paragraph (C) above by filing with the court:
 - (a) its witness list together with the statement described in (C)(1)(a);
 - (b) a suitable description of items provided for examination, etc.; and
 - (c) the statement of defense described in (C).
- (E) The court anticipates that compliance will be deemed satisfactory unless failure to comply is brought to the court's attention by Motion to Compel. Sanctions for failure of compliance or violations of orders on Motion to Compel shall be pursuant to Trial Rule 37. Prior to the filing of a Motion to Compel counsel shall comply with the provisions of Trial Rule 26(F).
- (F) Nothing herein shall limit any party's right to seek protective orders to avoid destruction or other loss of evidence, or to seek deposition at such times as they may desire.
- (G) The court may deny disclosure upon showing that:
 - (1) There is a substantial risk to any person of physical harm, intimidation, bribery, economic reprisals, or

unnecessary annoyance or embarrassment resulting from such disclosure which outweighs any usefulness of the disclosure to counsel.

- (2) There is a paramount interest in non-disclosure of an informant's identity and a failure to disclose will not infringe the constitutional rights of the accused. Disclosure of the identity of witnesses to be produced at a hearing or trial will be required.
- (3) Such determination of non-disclosure shall be by the court and shall not be within the discretion of the State or defense. Such non-disclosure shall be sought by motion for protective order.

(H) Disclosure shall not be required of:

- (1) Any matter otherwise protected by law (however disclosing the identity of juvenile co-defendants or witnesses shall not be barred because of delinquency non-disclosure statutes).
- (2) Work product of counsel including memoranda of opinions, theories, or research for themselves or from their legal or in-house investigative staff.

(I) This discovery order is a continuing order through the trial of this cause and no written motion shall normally be required except to compel discovery, for a protective order, or for an extension of time.

(J) Failure of either party to engage in and comply with discovery shall not be excused by the parties' unsuccessful or incomplete efforts to enter into a plea agreement or other resolution of the case unless both parties waive in writing

- (1) compliance with this order for a specified period of time and
- (2) any speedy trial requirements.

(K) Any cost for reproduction or transcripts under this order shall be borne by the party to whom the information is provided except that as to pauper counsel defendants the costs shall be borne by the State or County.

(L) The time limits for providing discovery materials to opposing counsel set out at (A) and (B) herein shall be reduced to fifteen (15) days in the event that the defendant requests a speedy trial.

- (M) Depositions should be scheduled for, and taken at, the Office of the Allen Prosecuting Attorney.
- (N) Nothing in this Order shall be in contravention of case law or statute.

Adopted effective January 1, 1995; amended effective March 1, 1996; Amended February 22, 1999, effective July 1, 1999.

LR02-CR00-2 Motion to Sequester

All motions to sequester a jury shall be filed no later than the 30th day preceding the time fixed for trial or within five (5) days after setting the case for trial, whichever is later.

Adopted effective January 1, 1995.

LR02-TR00-5 Stipulations

All stipulations must be in writing, signed by all parties or their counsel, signed by the defendant personally, and approved by the court.

Adopted effective January 1, 1995.

LR02-TR16-1 Pretrial Conference

At any time after the filing of the indictment or information, the court upon motion of any party or upon its own motion, may order one or more conferences to consider such matters as will promote a fair and expeditious trial. At the conclusion of a conference the court shall prepare and file a memorandum of the matters agreed upon. No admission made by the defendant or his attorney at the conference shall be used against the defendant unless the admissions are reduced to writing and signed by the defendant and his attorney.

Adopted effective January 1, 1995.

LR02-TR47-1 Selection of a Jury Panel

When jury panels have been drawn, the clerk shall cause a questionnaire to be sent to each member of such panels to be answered and returned by such persons. Such completed jury questionnaires are confidential and may only be removed from the files of the clerk or court by an attorney of record giving a proper receipt for a period of twenty-four (24) hours for inspection and copying the same.

Adopted effective January 1, 1995.

LR02-CR00-3 Special Procedures for Misdemeanor and Traffic Division

- (A) An attorney may enter his appearance on behalf of a defendant prior to the defendant's next court appearance and secure a one (1) week continuance without appearing before the court.
- (B) Defendants requesting counsel (private or public defender) will be granted a continuance of 2 weeks for the purpose of obtaining counsel.
- (C) Upon initial appearance, counsel will be entitled, upon request, to a continuance of 2 to 3 weeks for the purpose of investigating the case, discussing potential settlement with the Prosecuting Attorney, etc.
- (D) At second appearance, counsel and client **MUST** be prepared to enter a plea (guilty or not guilty) in the case.
- (E) Clients **MUST** accompany attorneys at **ALL** court appearances including initial continuances for investigation, trial setting, jury verification, etc.
- (F) The defendant must appear personally, or a written waiver signed by the defendant must be filed in order to waive trial by jury.
- (G) When a jury trial is requested, a jury verification date shall be set not later than six (6) days prior to the date set for the jury trial. The defendant shall appear personally on that date. Failure of the defendant and his attorney to appear shall result in the jury trial being cancelled and reset for a later date, and defendant being remanded to the custody of the Allen County Sheriff pending trial.

Adopted effective January 1, 1995.

LR02-TR00-6 Procedure Not Otherwise Specified

If no procedure is specially prescribed by these rules, the court may proceed in any lawful manner not inconsistent with these rules or with any applicable constitutional provision, statute, rule of the Supreme Court of Indiana, or local civil rules of the Courts.

Adopted effective January 1, 1995.

Service of Notice of Appeal

In addition to filing the Notice of Appeal with the Clerk, the Notice of Appeal shall also be hand-delivered to the Court Reporter for the Judicial Officer from which the appeal is taken.

The Court Reporter shall make a CCS entry acknowledging receipt of the Notice of Appeal.

Adopted effective June 1, 2000.

**JOINT LOCAL RULE OF THE ALLEN CIRCUIT AND SUPERIOR COURTS FOR
THE APPOINTMENT OF SPECIAL JUDGES**

Adopted Effective October 1, 1995

Rule

LR02-AR00-9

Appointment of Special Judges

- (A) In the event a regular Judge or any court in Allen County disqualifies himself or herself from a case, other than a felony or misdemeanor case, under Trial Rule 79(C) or in the event a special judge, selected pursuant to the provisions of Trial Rule 79(1)), (E), or (F), refuses or fails to accept his or her appointment as special judge, then the regular judge of the Allen Circuit Court or Allen Superior Court before whom the case is pending shall appoint at random from those eligible judges set forth below a special judge to thereafter preside over the case, subject to the limitations and procedures set forth in Trial Rule 79(1).
- (B) Unless they have previously served in the case, those judges subject to such random selection as special judges in cases, exclusive of felony and misdemeanor cases, shall be:
1. The regular Judge of the Allen Circuit Court
 2. The four (4) regular Judges of the Allen Superior Court
 3. The two (2) regular judges of the Allen Superior Court-Family Relations Division.
 4. The regular Judge of the DeKalb Circuit Court
 5. The regular Judge of the Huntington Circuit ('(Silt
 6. The regular Judge of the Huntington Superior Court
 7. The regular Judge of the Whitley Circuit Court
 8. The regular Judge of the Whitley Superior Court
 9. The regular Judge of the Noble Circuit Court
 10. The regular Judge of the Noble Superior Court
 11. The regular Judge of the Noble County Court
- (C) Upon such selection and appointment, the new special judge and parties to the litigation shall be promptly notified by the judge before whom the case was pending.
- (D) In the event none of the judges listed in Paragraph B of this Local Rule is eligible to serve as special judge in the case or special circumstances of the case warrant selection of a special judge by the Indiana Supreme Court pursuant to Trial Rule 79(K), the judge before whom the case is pending shall promptly certify that fact to the Indiana Supreme Court.
- (E) This Rule shall be effective October 1, 1995.
- (F) This Rule shall not apply to the selection, assignment or reassignment of special judges in felony and misdemeanor cases in Allen County. The assignment and reassignment of judges as special judges in felony and misdemeanor cases in Allen County shall be governed by the joint Local Rule of the Allen Circuit and Superior Court Criminal Division as approved by the Indiana Supreme Court on July 27, 1995.

ALLEN COUNTY LOCAL RULE FOR COURT REPORTER SERVICES

Adopted June 16, 1998, Effective October 30, 1998

Rule LR02-AR00-1 Rule for Court Reporter Services

Section One. Definitions. The following definitions shall apply under this local rule.

- (1) **Court Reporter** is a person who is specifically designated by a court to perform the official court reporting services for the court including preparing a transcript of the record.
- (2) **Equipment** means all physical items owned by the court or other governmental entity and used by a court reporter in performing court reporting services. Equipment shall include, but not be limited to, telephones, computer hardware, software programs, disks, tapes, and any other device used for recording and storing, and transcribing electronic data.
- (3) **Work space** means that portion of the court's facilities dedicated to each court reporter, including but not limited to actual space in the courtroom and any designated office space.
- (4) **Page** means the page unit of transcript which results when a recording is transcribed in the form required by Indiana Rule of Appellate Procedure 7.2
- (5) **Recording** means the electronic, mechanical, stenographic or other recording made as required by Indiana Rule of Trial Procedure 74.
- (6) **Regular hours worked** means those hours which the court is regularly scheduled to work during any given work week. Depending on the particular court, these hours may vary from court to court within the county but remain the same for each work week.
- (7) **Gap hours worked** means those hours worked that are in excess of the regular hours worked but hours not in excess of forty (40) hours per week.
- (8) **Overtime hours worked** means those hours worked in excess of forty (40) hours per work week.
- (9) **Work week** means a seven (7) consecutive day week that consistently begins and ends on the same days throughout the year; i.e. Sunday through Saturday, Wednesday through Tuesday, Friday through Thursday.
- (10) **Court** means the particular court for which the court reporter performs services. Court may also mean all of the courts in Allen County.
- (11) **County indigent transcript** means a transcript that is paid for from county funds and is for the use on behalf of a litigant who has been declared indigent by a court.
- (12) **State indigent transcript** means a transcript that is paid for from state funds and is for the use on behalf of a litigant who has been declared indigent by a court.
- (13) **Private transcript** means a transcript means a transcript, including but not limited to a deposition transcript, that is paid for by a private party.
- (14) **Expedited transcript** means a transcript which is requested to be prepared within five (5) working days or less.

Section Two. Salaries and Per Page Fees

- (1) Court Reporters shall be paid an annual salary for time spent working under the control, direction and direct supervision of their supervising court during any regular work hours, gap hours or overtime hours. The supervising court shall enter into a written agreement with the court reporters which outlines the manner in which the court reporter is to be compensated for gap and overtime hours; i.e. monetary compensation or compensatory time off regular work hours.
- (2) The maximum per page fee a court reporter may charge for the preparation of a county indigent transcript, state indigent transcript, and private practice transcript shall be \$3.75; and an expedited rate of \$6.50 per page for expedited transcripts. The court reporter shall submit a claim directly to the county for the preparation of any county indigent transcripts.
- (3) The maximum fee that a court reporter may charge for copies shall be \$1.00 per page.
- (4) The minimum fee that a court reporter may charge for transcripts is \$35.00.
- (5) An additional labor charge approximating the hourly rate based upon the court reporter's annual court compensation may be charged for the time spent binding the transcript and exhibits.
- (6) Each court reporter shall report, at least on an annual basis, all transcript fees received for the preparation of either county indigent, state indigent, or private transcripts to the Indiana Supreme Court Division of State Court Administration. The reporting shall be made on forms prescribed by the Division of State Court Administration.

Section Three. Private Practice.

- (1) If a court reporter elects to engage in private practice through the recording of a deposition and/or preparing of a deposition transcript, and the court reporter desires to utilize the court's equipment, work space and supplies, and the court agrees to the use of court equipment for such purpose, the court reporter shall enter into written agreement which must, at a minimum, designate the following:
 - a) The reasonable market rate for the use of equipment, work space and supplies;
 - b) The method by which records are to be kept for the use of equipment, work space and supplies; and
 - c) The method by which the court reporter is to reimburse the court for the use of the equipment, work space and supplies.

2006/2007 CASELOAD ALLOCATION PLAN FOR ALLEN COUNTY COURTS

LR02-AR1E-1 Domestic Relations Caseload Distribution

New cases filed with the Clerk of the Allen Superior and Circuit Court on a Verified Petition for Dissolution of Marriage without legal representation, (otherwise known as pro se divorces), shall be assigned on an alternating basis (every other case) to the Superior and Circuit Court respectively. Effective January 1, 2007

The courts in Allen County are organized under IC 33-33-2 which specifies that, in addition to the judge of the Allen circuit court, the Allen superior court consists of nine (9) judges serving in three (3) divisions as follows:

- (1) Two (2) judges serve in the family relations division.
- (2) Three (3) judges serve in the criminal division.
- (3) Four (4) judges serve in the civil division.

The statute further specifies the number of magistrates, referees and hearing officers serving the Allen Circuit court and the criminal and civil divisions of the Allen superior court as follows:

Circuit Court

One (1) full-time magistrate.

One (1) hearing officer.

Superior Court – Civil Division

Up to four (4) full-time magistrates.

Superior Court Criminal Division

Up to three (3) full-time magistrates.

In addition, the Superior Court Family Relations Division has three (3) full-time magistrates and one (1) juvenile referee. Thus, in total, the courts in Allen County consist of a total of ten (10) judges and thirteen (13) additional judicial officers.

By statute and by local rule, certain case types are heard in the Circuit Court and within each division of the Superior Court. The result of this, in terms of caseload distribution and weighted caseload analysis (using 2005 filing statistics), is as follows:

2005 Weighted Caseload / Utilization Factor

(maximum allowable caseload differential: 0.40)

	<u>Judge</u>	<u>Need</u>	<u>Have</u>	<u>Utiliz.</u>
Circuit	Thomas J. Felts	4.70	3.00	1.57
Superior 1	Nancy Eshcoff Boyer	2.17	2.00	1.08
Superior 2	Daniel G. Heath	2.15	2.00	1.08
Superior 3	Stanley A. Levine	2.19	2.00	1.09
Superior 4	Kenneth R. Scheibenberger	2.72	2.00	1.36
Superior 5	Frances C. Gull	2.88	2.00	1.44
Superior 6	John F. Surbeck, Jr.	2.70	2.00	1.35
Superior 7	Stephen M. Sims	3.67	3.00	1.22
Superior 8	Charles F. Pratt	2.79	3.00	0.93
Superior 9	David J. Avery	2.45	2.00	1.22

Differential: Circuit - Superior 8 0.64

A difference in the utilization factor between Circuit Court and Superior 8 in 2005 was .64. This is consistent with the caseload differential in 2004 and requires that the courts in Allen County develop a caseload distribution plan to reduce the caseload differential to a level within the maximum allowable difference of .40.

To address this, the courts have targeted a sub-set of DR cases, *pro se* cases, where an uneven distribution of cases has directly contributed to caseload distribution problems in Allen County.

Pro Se DR Filings

	<u>2004</u>	<u>2005</u>
Circuit	483	470
Superior	75	64
	<u>558</u>	<u>534</u>

Circuit by %	86.56%	88.01%
Superior by %	13.44%	11.99%

By identifying and resolving the uneven distribution of *pro se DR cases* between Circuit Court and Superior 8, the courts in Allen County come into compliance with the caseload distribution standard established by the Supreme Court. The effect of evenly distributing *pro se DR filings* between Circuit Court and Superior 8 is demonstrated below:

2005 Weighted Caseload / Utilization Factor adjusted for pro se DR

(maximum allowable caseload differential: 0.40)

	<u>Judge</u>	<u>Need</u>	<u>Have Utiliz.</u>	
Circuit	Thomas J. Felts	4.23	3.00	1.41
Superior 1	Nancy Eshcoff Boyer	2.17	2.00	1.08
Superior 2	Daniel G. Heath	2.15	2.00	1.08
Superior 3	Stanley A. Levine	2.19	2.00	1.09
Superior 4	Kenneth R. Scheibenberger	2.72	2.00	1.36
Superior 5	Frances C. Gull	2.88	2.00	1.44
Superior 6	John F. Surbeck, Jr.	2.70	2.00	1.35
Superior 7	Stephen M. Sims	3.67	3.00	1.22
Superior 8	Charles F. Pratt	3.25	3.00	1.08
Superior 9	David J. Avery	2.45	2.00	1.22

Differential: Superior 5 - Superior 1, 2, 8 0.35

This approach to caseload distribution accomplishes the desired goal with minimal disruption to courts, divisions, litigants and the legal community in Allen County, and is recommended for approval.¹

¹ Over and above the even distribution of *pro se* DR cases between Circuit Court and Superior 8 in the proposal above, the court also anticipates an additional number of DR filings in Superior 8 filed by the State of Indiana for enforcement purposes.

LOCAL RULES
OF THE
SMALL CLAIMS DIVISION
OF ALLEN SUPERIOR COURT---
CIVIL DIVISION

Adopted Effective January 1, 1988

Including Amendments Received Through November 15, 2006

Rule	
LR02-SC01-1	Scope
LR02-SC00-2	General Procedure
LR02-SC00-3	Forms
LR02-AR00-7	Hearing Calendars
LR02-TR76-1	Change of Judge
LR02-SC5-1	Counterclaims Outside Small Claims Division Jurisdiction
LR2-TR53.5-3	Continuances
LR02-TR41-1	Dismissal of Actions
LR02-TR60-1	Default
LR02-TR00-8	Attorney Fees
LR02-TR00-9	Judgments for Payment of Money
LR02-SC2-1	Judgments for Possession of Real Estate or Personal Property
LR02-SC11-1	Release of Judgment
LR02-TR69-5	Proceedings Supplemental
LR02-TR69-6	Court Orders to Appear
LR02-TR00-10	Contempt/Rule to Show Cause/Body Attachment
LR02-TR69-7	Garnishment
LR02-TR69-8	Post-Judgment Orders to Self-Employed and Other Judgment Debtor(s)
LR02-TR70-1	Writs
LR02-SC00-4	Bankruptcy

LR02-SC01-1 Scope

- (A) **Scope.** These rules shall govern the procedure and practice of the Small Claims Division, Allen Superior Court – Civil Division.
- (B) **Citation.** These rules may be cited as LR02-SC _____. The small claims rules promulgated by the Indiana Supreme Court are hereinafter referred to as S.C._____; and the Indiana Rules of Trial Procedure are hereinafter referred to as T.R._____.

Adopted effective Jan. 1, 1988; Amended effective Jan. 1, 2007.

LR02-SC00-2 General Procedure

- (A) **Conflict of Rules.** All proceedings in the Allen Superior Court, Small Claims Division shall be governed by the Small Claims Rules promulgated from time to time by the Indiana Supreme Court, and the local rules set forth herein. In instances where these local rules conflict with the rules promulgated by the Indiana Supreme Court, the latter shall control.
- (B) **Tender of Completed Documents and Proper Costs.** Parties or their attorneys are solely responsible to tender to the Court any documents desired to be filed in complete and correct form, together with proper costs, as determined by the Clerk. Neither the Court nor the Clerk will be responsible for delays or deadlines missed due to the tender of incomplete or incorrect documents, or improper costs.
- (C) **Entries.** Parties or their attorneys are solely responsible to secure entries on their packets from the law clerk, scheduling clerk, or Judicial Officer on the scheduled date of hearing or other activity. Packets remaining after the scheduled time for hearing or other activity will receive the entry, “No one appears”, unless dismissal or judgment LR02-TR41-8 or LR02-TR60-9 is appropriate.
- (D) **Misplaced Packets.** If parties or their attorneys are unable, after receiving assistance from the Clerk and/or Court, to locate a packet for an entry to be made, said parties or attorneys shall tender the document(s) sought to be filed or make a written record of the entry desired, which shall be initialed and dated for said purpose by any Court employee except the receptionist. No later request for a *nunc pro tunc* or other corrective entry will be considered without such supporting record.

- (E) **Notice Required to Obtain Court's Packets.** The Clerk shall retrieve as many as three (3) packets per party or per attorney per day. Any party or attorney desiring to review more than three (3) packets in one day shall submit to the Clerk a written list of the cause numbers of the packets desired, or a completed Clerk's pull card for each packet desired, in chronological order to the Clerk at least one (1) full business day prior to the date upon which the packets are to be reviewed.
- (F) **Appearance by Husband or Wife.** Except for hearings on proceedings supplemental or by contrary order of the Court, appearance in any cause by a party's spouse shall be considered the appearance of the party upon said spouse's representation on the record that the party and the appearing spouse are currently married and living together.
- (G) **Parties' Current Addresses.** Notices from the Court will be sent to the parties at the most recent addresses contained in the Court's packet. The parties are therefore solely responsible to maintain their current address in all packets concerning them.

Adopted effective Jan. 1, 1988; Amended effective Jan. 1, 2007.

LR02-SC00-3 Forms

- (A) **Court's Forms.** The Court shall from time to time, and with the consultation of the Clerk, draft forms for use of litigants, the Clerk, and the Court in small claims actions.
- (B) **No Other Forms.** Originals or photocopies of the forms described in LR02-SC00-3 (A) shall be acceptable for filing. Any other form or photocopy thereof presented to the Clerk shall be accepted for filing only if such form receives prior approval of the Judicial Officer and the Civil Division of the Allen Superior Court, and in such instance, blank forms identical to that submitted and approved shall be immediately provided to the Clerk and to the Judicial Officer for future reference and comparison.

Adopted effective Jan. 1, 1988. Amended effective Jan. 1, 2007.

LR02-AR00-7

Hearing Calendars

- (A) **General Procedure.** Upon the filing of the notice of claim, the plaintiff may schedule the first hearing of said claim on the accounts calendar or Judicial Officer's calendar.
- (B) **Accounts Calendar.** If the notice of claim is set for first hearing on the accounts calendar, no party is expected to be prepared for trial on the merits at the first hearing, and the setting shall serve as an opportunity for the parties to meet and informally resolve their dispute. However, a party's failure to appear for first hearing on the accounts calendar may be cause for entry of default judgment or dismissal against said party.
- (C) **Judicial Officer's Calendars.** If the notice of claim is set for first hearing on the Judicial Officer's calendar, all parties are expected to be prepared for trial on the merits at the first hearing. The parties are responsible for reserving the appropriate amount of time for trial on the Judicial Officer's calendar.
- (D) **Change of Calendar.** At the time any continuance is granted, hearing on the cause may be rescheduled to a calendar different than the calendar on which it was originally set. However, if such a calendar change is made, the party making the calendar change shall notify the opposing party of the change.

Adopted effective Jan. 1, 1988; Amended effective Jan. 1, 2007.

LR02-TR76-1

Change of Judge

- (A) **General Procedure.** A change of Judicial Officer shall be granted as provided by statute and by the Indiana Rules of Trial Procedure, except that the Judicial Officer of the Small Claims Division may be included on the panel named. The Court shall set a time within which the parties are to strike that does not exceed fourteen (14) days.
- (B) **Striking.** The party filing the motion shall strike first. After the non-moving party strikes, the remaining judicial officer shall be appointed to hear the case. The case shall then be set on that officer's calendar. If a party fails to strike within the time set, said party shall not be entitled to a change of judge, or shall be subject to the Court's arbitrary assignment of the case to one of the two remaining judicial officers, as appropriate.

Adopted effective Jan. 1, 1988; Amended effective Jan. 1, 2007

**LR02-SC5-1 Counterclaims Outside Small Claims Division
Jurisdiction**

- (A) **Counterclaims in Excess of the Court's Monetary Jurisdiction.** A defendant who has a counterclaim in excess of the monetary jurisdiction of the Small Claims Division who does not wish to waive the excess of the claim, must file this claim in a timely fashion as a separate action on the plenary docket of the Allen Superior Court, Civil Division, or in any other Court of competent jurisdiction. Either party may then file a motion for consolidation pursuant to T.R. 21(B) in both pending actions.
- (B) **Counterclaims Outside the Court's Subject Matter Jurisdiction.** A defendant who has a counterclaim outside the subject matter jurisdiction of the Small Claims Division must file his claim in a timely fashion as a separate action on the plenary docket of the Allen Superior Court, Civil Division, or in any other Court of competent jurisdiction. Either party may then file a motion for consolidation pursuant to T.R. 21(B) in both pending actions.

Adopted effective Jan. 1, 1988.

LR2-TR53.5-3 Continuances

- (A) **General Rule.** Except as provided in LR2-TR53.5-7 (B) and (D) below, each party to an action may be granted one (1) continuance of right and without showing good cause. A continuance under this subsection shall not be granted within seven (7) days of the trial, unless approved by a Judicial Officer. All motions for continuances must be made in person or by the party's attorney who has filed a written appearance on behalf of said party. The party or attorney obtaining the continuance shall notify any opposing party in a timely fashion.
- (B) **Possession of Real Estate or Personal Property.** No continuance will be granted to a defendant where the action involves the issue of possession of real estate or personal property, except on good cause shown and upon approval by a Judicial Officer.
- (C) **Agreed Continuance.** Any action may be continued by agreement of the parties.
- (D) **Proceedings Supplemental.** No motion for continuance of a proceedings supplemental hearing will be granted, except by agreement of the parties, or on good cause shown and upon approval by a Judicial Officer.

- (E) **Sanctions for Failure to Notify.** Where notice of a continuance has not been timely given, the Court may assess sanctions which may include, but are not limited to, reasonable attorney's fees, lost wages and other costs for each party and necessary witness appearing due to lack of notice. Motions for sanctions shall be heard as a part of the trial on the merits.

Adopted effective Jan. 1, 1988; Amended effective Jan. 1, 2007.

LR02-TR41-1 Dismissal of Actions

- (A) **Dismissal by Plaintiff.** Any claim may be dismissed by the plaintiff at any time before judgment has been entered unless a counterclaim or motion for summary judgment has been filed by a defendant.
- (B) **Dismissal by Stipulation.** Any claim may be dismissed by filing a stipulation of dismissal signed by all parties to the claim.
- (C) **Dismissal by Court.** The cause or any pending pleadings in the cause may be dismissed with or without prejudice upon order of the Court, including by way of illustration and not of limitation, as follows:
- (1) the cause has not been reduced to judgment and where there has been no action on the case for a period of sixty (60) days; provided however, that no such cause shall be dismissed without notice and hearing; or
 - (2) a proceedings supplemental pleading has been filed and there is no action on the day on which the proceedings supplemental is set for hearing, or for sixty (60) days thereafter.

Adopted effective Jan. 1, 1988.

LR02-TR60-1 Default

- (A) **Pre-Judgment Grace Period.** The Court shall permit each party a twenty (20) minute grace period to appear for any prejudgment accounts or trial calendar setting, or for any other matter not pertaining to a proceeding supplemental hearing.
- (B) **Default of Defendant and Default Affidavit.** Upon the failure of a defendant to appear at the initial hearing or at a trial on the merits, the plaintiff(s) shall be entitled to judgment on the merits against said defendant. In addition to any other applicable requirements of Indiana law, the plaintiff or plaintiff's(s') attorney shall sign and file a completed "Affidavit for Judgment by Default" form furnished by the Court.

- (C) **Default of Plaintiff.** Upon the failure of a plaintiff to appear at the initial hearing or at a trial on the merits, the cause shall be dismissed without prejudice and default judgment shall be entered for the defendant against the plaintiff on any timely-filed counterclaim. Upon plaintiff's failure to appear at the initial hearing or at a trial on the merits in a subsequent cause based on the same facts as the cause earlier dismissed without prejudice, said subsequent cause shall be dismissed with prejudice and default judgment shall be entered for the defendant against the plaintiff on any timely-filed counterclaim.
- (D) **Letter Notice for Inadequate Service.** Where a plaintiff has received return of service which discloses less than ten (10) days notice to a defendant of a hearing on the Accounts Calendar or a Trial Calendar, and said defendant fails to appear for said hearing, the plaintiff shall not be entitled to entry of default. If the plaintiff wishes to proceed, the plaintiff shall notify the defendant of a new calendar setting by first class mail to the address at which service was obtained. Such notice is sufficient if said notice is sent and the hearing set so as to comply with T.R. 6 and S.C. 2.
- (E) **Setting Aside Default Judgment.** A default judgment may be set aside according to the procedures set forth in S.C. 10(C) and T.R. 60(B). Forms for this purpose are available from the Court upon request.
- (1) *Expedited Hearing.* An expedited hearing on such a motion to set aside default judgment shall be set on the Judicial Officer's calendar.
- (2) *Stay of Collection Proceedings.* In any cause in which a motion to set aside default judgment has been filed, collection proceedings as to the judgment debtor filing the motion will not be stayed unless a motion to stay such proceedings is filed and granted pursuant to T.R. 62(B).
- (F) **Default on Proceedings Supplemental.** The Court shall permit each party a thirty (30) minute grace period to appear for any proceedings supplemental hearing. After the thirty (30) minute grace period has elapsed:
- (1) a judgment creditor shall be entitled to apply for appropriate proceedings supplemental sanctions; or
- (2) a judgment debtor appearing for the proceedings supplemental hearing shall be entitled to leave without risk of sanction for failure to appear.

A judgment debtor so appearing is entitled to leave without risk of sanction for failure to appear even if the judgment creditor or its attorney is present for the proceedings supplemental hearing, if said judgment debtor has not been called for the proceedings supplemental interview within the grace period. However, a judgment creditor's failure to conduct the proceedings supplemental interview within the grace period shall not bar the judgment creditor from filing a garnishment order against the judgment debtor's wages if appropriate under LR02-TR69-17. For this purpose, the grace period shall begin at the time of the scheduled hearing or trial or at the time the judgment debtor registers with the Court's receptionist, whichever is later.

Adopted effective Jan. 1, 1988; Amended effective Jan. 1, 2007.

LR02-TR00-8 Attorney Fees

Evidence Required to Support Award. The amount of attorney fees awarded shall be within the sound discretion of the Court. No attorney fees shall be awarded unless:

- (1) provided for by written agreement(s) between the parties; or
- (2) according to applicable statute(s) or common law. Proof of such fees shall be in the form of sworn testimony from, or the affidavit of, the attorney(s) whose services are being proved.

Adopted effective Jan. 1, 1988.

LR02-TR00-9 Judgments for Payment of Money

In General. Judgments for payment of money shall be enforceable according to the Indiana Rules of Trial Procedure and applicable statutes.

Adopted effective Jan. 1, 1988.

Judgments for Possession of Real Estate or Personal Property

- (A) **Bifurcated Judgment and Expedited Hearing on Possession.** Judgments in actions involving the issue of possession of real estate or personal property shall be bifurcated. The initial hearing on possession issues shall be set in an expedited setting on the Judicial Officer's calendar. A final judgment for possession of the real estate or personal property shall be entered at the initial hearing and a judgment for back rent and/or other damages, if any, shall be entered at a subsequent hearing.
- (B) **Notice to Tenant.** Unless the landlord shall file the pleadings and bond set forth in I.C. § 32-6-1.5-1, *et seq.*, notice to a tenant shall be ten (10) days as required by S.C. 2.
- (C) **Disposition of Tenant's(s') Remaining Personal Property.** If a tenant leaves personal property of value in or about the demised premises under circumstances which reasonably show abandonment of said personal property, the landlord may dispose of said property by:
- (1) removing said property from the premises using reasonable care and storing it in a location reasonably secure from damage of any kind; and
 - (2) immediately notifying tenant by first class mail to tenant's last known address, with a copy thereof retained by the landlord, that the property is so stored, that storage charges (if any, but not to exceed \$3.00 per day) are accruing, and that the property is available to tenant upon reasonable notice to landlord at a reasonable time for a period at least two (2) weeks from the date said letter notice is mailed to tenant. Said notice shall also contain landlord's telephone number, and an address at which, and reasonable time during which, landlord can be contacted during the two (2) week time period.
 - (3) If at the expiration of the two (2) week retrieval period, tenant has not contacted landlord to arrange an imminent and mutually convenient date and time for retrieval of tenant's personal property, landlord may dispose of said property in a reasonable manner, including the destruction of apparently valueless property and the private sale or donation of property of value. Proceeds from any sale and credit for any donation shall first be applied to reduce any accrued storage charges and then to reduce any alleged back rent or damages beyond normal wear and

tear established by the Court.

Adopted effective Jan. 1, 1988; Amended effective Jan. 1, 2007.

LR02-SC11-1 Release of Judgment

- (A) **Release of Judgment.** When any judgment has been fully paid and satisfied, including any interest and all costs, and the judgment creditor has received all of said monies or they are available in the Clerk's office, said judgment creditor shall immediately release the judgment against the debtor by personally executing such release on the judgment record of the Clerk, or by causing such release to be filed with the Clerk.
- (B) **Failure to Release Judgment.** Upon a judgment creditor's failure to release a judgment allegedly fully paid and satisfied, the affected debtor may:
 - (1) proceed to notify the judgment creditor and file suit for penalties as set forth in I.C. § 32-8-1-2; or
 - (2) move on the record of the cause in which the judgment was entered to have said judgment deemed satisfied pursuant to T.R. 13(M), upon which motion notice shall issue and hearing shall be held by the Court.
- (C) **Release of Judgment.** Upon payment in full, including accrued interest, the Clerk shall notify the judgment creditor and shall require him or her to file a Release of Judgment. If the judgment creditor fails to file a Release of Judgment within thirty (30) days of the issuance of the notice, the Clerk shall enter on the Chronological Case Summary that the judgment has been satisfied, the Plaintiff has failed to release judgment pursuant to Court directive, and the Clerk shall enter a Release of Judgment in the judgment docket.

Adopted effective Jan. 1, 1988; Amended effective Jan. 1, 2007.

LR02-TR69-5 Proceedings Supplemental

- (A) **General Procedure.** Proceedings supplemental to execution shall be governed by T.R. 69(E) of the Indiana Rules of Trial Procedure and applicable statutes.
- (B) **Ten Day Rule.** A motion for proceedings supplemental may not be filed until ten (10) calendar days have elapsed since the date of judgment except by order of the Court for good cause shown.

- (C) **One Year Rule.** Except by order of the Court for good cause shown, no proceedings supplemental may pend for more than six (6) months from the date of its filing, and no judgment creditor may file more than four (4) proceedings supplemental per year against any individual judgment debtor in a given cause. At the end of said six (6) month period, any pending proceedings supplemental shall be dismissed.
- (D) **Hearing.** Unless a party specifically requests otherwise and sets the hearing accordingly, all hearings on proceedings supplemental will be set on the accounts calendar.
- (E) **Bank Interrogatories.** Except by order of the Court for good cause shown, judgment creditors may not submit garnishment interrogatories to more than two (2) banking institutions for each hearing on proceedings supplemental.
- (F) **Conduct of Hearings.** Unless the judgment creditor is represented by an attorney at the proceedings supplemental hearing, said hearing shall be conducted by an officer of the Court.
- (G) **Completion of Interview Forms.** At each proceedings supplemental hearing, the attorney or the Court's officer conducting the hearing shall complete and file with the Court a proceedings supplemental interview form provided by the Court based on the judgment debtor's testimony at said hearing. At its completion and prior to its filing, the judgment debtor shall be given the opportunity to review and sign said form in acknowledgment of its accuracy.
- (H) **Proceedings Supplemental During Pendency of Garnishment Order.** If a garnishment order has been issued and remains unsatisfied, additional proceedings supplemental directed to the judgment debtor or to an additional garnishee defendant may be filed only by order of the Court for good cause shown.

Adopted effective Jan. 1, 1988.

LR02-TR69-6 Court Orders to Appear

- (A) **General Use.** Judgment creditors may request the Court to issue an order to appear (COTA) to judgment debtor(s) only when:
 - (1) an active proceedings supplemental is pending against the judgment debtor;

- (2) the hearing date set for the COTA is within sixty (60) days of the date on which the COTA is issued; and
 - (3) good cause exists for the COTA and is shown on the record at the time the COTA is requested.
- (B) **Good Cause.** “Good cause” under LR02-TR69-15 (A)(3) shall include but not be limited to:
 - (1) the judgment debtor failed to produce documents as previously ordered by the Court;
 - (2) the judgment debtor has indicated intended relocation with new address presently unknown;
 - (3) there is a reasonable certainty that the judgment debtor’s financial status will substantially change within sixty (60) days.
- (C) **COTAs and Garnishment Orders.** When a garnishment order has issued, no pending COTA will be enforced, and no COTA will issue to the judgment debtor, except by order of the Court for good cause shown.
- (D) **Failure to Appear on COTA.** Upon a judgment debtor’s failure to appear on the date and time set by the COTA, the judgment creditor may file contempt proceedings under LR02-TR00-16.
- (E) **Agreements to Appear Without COTA.** In any proceedings supplemental, the parties may agree to reset a hearing without use of a COTA. If after such agreement either party fails to appear at the reset hearing, the underlying proceedings supplemental shall be dismissed and no sanctions shall be available for such failure to appear.

Adopted effective Jan. 1, 1988; Amended effective Jan. 1, 2007

LR02-TR00-10 Contempt/Rule to Show Cause/Body Attachment

- (A) **Contempt.** Upon failure of a judgment, debtor or garnishee defendant to appear as ordered for a scheduled hearing, the judgment creditor may file a contempt citation as to said person. Said contempt citation must be filed within thirty (30) days of the failure to appear.
- (B) **Body Attachment.** Body attachment shall be requested and issued only when:
 - (1) the judgment debtor or garnishee defendant previously ordered to appear for a scheduled hearing was personally served with a contempt citation and failed to appear for the contempt hearing;

- (2) the request for body attachment is filed within thirty (30) days of the contempt hearing at issue; and
- (3) the judgment creditor properly completes and files all pleadings and forms from time to time required by the Court. Said pleadings and forms currently include for each judgment debtor:
 - (a) one (1) Request for Body Attachment;
 - (b) at least three (3) Writs of Attachment which must include a statement setting a bond for release; (The bond amount should be set at the lesser of \$500.00 or the total amount remaining unpaid on the judgment including costs and interest.)
 - (c) and the Warrant Information Card, including the judgment debtor's social security number or date of birth.

Adopted effective Jan. 1, 1988. Amended Aug. 29, 1997, effective Oct. 1, 1997.

LR02-TR69-7 Garnishment

- (A) **General Procedure.** All garnishment proceedings shall comply with T.R. 69(E) and applicable statutes.
- (B) **Requirements for Garnishment Order to Issue.** A garnishment order shall not issue with respect to a judgment debtor's wage or other property without:
 - (1) an active proceedings supplemental as to the judgment debtor or waiver of notice by said judgment debtor;
 - (2) service on the garnishee-defendant of the proceedings supplemental by
 - (a) certified mail, or refusal thereof,
 - (b) Sheriff's service, or
 - (c) private process server; and
 - (3) return of answered interrogatories, other verification of employment by the garnishee-defendant, or failure to answer interrogatories after notice.
- (C) **Voluntary Garnishments.** In instances where a judgment debtor has entered a voluntary agreement for periodic payments to satisfy judgment and has further consented to garnishment upon default, notwithstanding the terms of the agreement, no garnishment order shall issue unless:

- (1) an active proceeding supplemental is pending against the judgment debtor and the garnishee-defendant;
 - (2) the judgment debtor's employment by said garnishee-defendant has been verified as set forth in LR02-TR69-17 (A) and (B) on the record within three (3) months prior to the date on which judgment creditor requests issuance of the garnishment order; and
 - (3) the judgment creditor represents on the record the default of judgment debtor.
- (D) **Stay.** In instances where a garnishment order has been issued and served on a garnishee-defendant, if the judgment creditor then stays said order, said judgment creditor shall lose any priority over pending but later garnishment orders pertaining to the judgment debtor's wages.
- (E) **Release.** Upon receipt by the judgment creditor or by the Clerk on the judgment creditor's behalf of monies sufficient to fully satisfy the judgment, and accrued interest and costs, the judgment creditor shall immediately obtain a court order releasing the applicable garnishment order and shall forward a copy to the garnishee-defendant(s).

Adopted effective Jan. 1, 1988; Amended effective Jan. 1, 2007

LR02-TR69-8 Post-Judgment Orders to Self-Employed and Other Judgment Debtor(s)

- (A) **General Procedure.** Post-judgment orders to self-employed and other judgment debtors are available pursuant to T.R. 69(E) and I.C. § 34-1-44-7 upon the filing of a verified motion for proceedings supplemental by the judgment creditor.
- (B) **Hearing Before Judicial Officer.** All motions for a court order requiring the judgment debtor(s) to apply specified or unspecified property towards the satisfaction of the judgment pursuant to T.R. 69(E)(3) or I.C. § 34-1-44-7 shall be set for hearing before the Judicial Officer.

Adopted effective Jan. 1, 1988; Amended effective Jan. 1, 2007.

LR02-TR70-1 Writs

- (A) **General Procedure.** Writs to enforce the Court's orders or in aid of its jurisdiction are generally available as set forth in T.R. 70(A) and Title 34 of Indiana Code.

- (B) **Writs of Execution for Delivery of Possession of Real Estate.** Except by order of the Court for good cause shown, no writ of execution for delivery of possession of real estate shall issue before one (1) calendar week has expired after entry of the underlying judgment by the Court.

Adopted effective Jan. 1, 1988.

LR02-SC00-4 Bankruptcy

- (A) **Bankruptcy of Judgment Debtor.** All Court action, including pending collection proceedings, will be stayed as to any judgment debtor:
- (1) who files with the Court in each relevant action one (1) copy of the bankruptcy court's notice of relief; or
 - (2) whose attorney files with the Court in each relevant action a motion for stay reciting the prior filing of bankruptcy by the judgment debtor and resultant stay of all proceedings by the bankruptcy court, including the cause number and court of the bankruptcy.

Adopted effective Jan. 1, 1988.

**ATTORNEY AND PERSONAL REPRESENTATIVE FEE GUIDELINES FOR
DECEDENTS' ESTATES
ALLEN SUPERIOR COURT – CIVIL DIVISION**

Adopted Aug. 15, 1990

Including Amendments Received through October 15, 2005

**Effective for Estates Opened On or After October 1, 1990 and Any Closed
On or After March 1, 1991**

**LR02-AR00-6 ATTORNEY AND PERSONAL REPRESENTATIVE FEE
GUIDELINES FOR DECEDENTS' ESTATES**

ATTORNEY FEES-ESTATES

Preamble

The Allen Superior Court, Civil Division has adopted these guidelines in an effort to achieve the following objectives:

- (A) Establish uniformity in determining a fair and reasonable fee for supervised estates;
- (B) Provide a guideline to assist the Court in determining fair and reasonable fees;
- (C) Furnish a guideline to attorneys so they can discuss fees that may be reasonably incurred with their clients at the onset of administration;
- (D) Assist the legal profession to arrive at a fair and reasonable fee for the estate work.

Every attorney and personal representative has an obligation to request a fee which is fair and reasonable for the work performed, taking into account those provisions of the Rules of Professional Conduct applicable to attorneys admitted to practice law in the State of Indiana. Except under extraordinary circumstances, a request for fees should not exceed these guidelines. In an uncomplicated estate, fees should be less than those listed in the schedule, and fees must always bear a reasonable relationship to the services rendered.

1. PRINCIPLES APPLICABLE TO FEE DETERMINATIONS

Although fee guidelines have been promulgated by the Court for probate matters, it is important that your attention be directed to certain criteria as they pertain to these guidelines as follows:

- (A) The time and labor required, the novelty, complexity, or difficulty of the questions involved, the skill required to perform the services properly, including a determination as to how much of the attorney's time was devoted to ministerial functions;
- (B) The nature and extent of the responsibilities assumed by the attorney and the results obtained, including the considerations of the identity of the personal representative and the character of the probate and non-probate transferred assets;
- (C) The sufficiency of assets properly available to pay for legal services, and whether the attorney's duties are expanded by the existence of non-probate assets because of their inclusion for tax purposes, both federal and state;
- (D) The timeliness with which the necessary services are performed consistent with statutory requirements, the Court's rules of procedure and applicable Rules of Professional Conduct.

Attorneys are urged to discuss their fee and that of the personal representative at the time they are retained in all probate matters.

2. ATTORNEY FEE GUIDELINES

I. Administration:

Gross estate services are considered to normally include: probating the Will, opening of the estate, qualifying the personal representative, preparing and filing the Inventory, paying claims, collecting assets, preparing and filing non-extraordinary petitions, preparing and filing of Fiduciary Income Tax Return, preparing and filing all tax returns and schedules, obtaining Court Orders thereon, and paying the taxes, preparing and filing the Final Report, obtaining Order approving same, distributing assets, obtaining discharge of the personal representative, and preparing and serving all notices on interested parties throughout the proceedings. This list shall not be considered to be exclusive.

- (A) Gross Estate –Minimum Fee of \$500.00 Plus:
- | | |
|--------------------------------|---------|
| Up to \$100,000. not to exceed |6% |
| Next \$100,000. not to exceed |4% |
| Next \$100,000. not to exceed |3% |
| Next \$100,000. not to exceed |2% |
| Over \$400,000. not to exceed |1% |
- (B) Miscellaneous—Extraordinary Services:
- (1) Sale of Real EstateHourly Rate.
 - (2) Indiana Inheritance Tax Schedule—
(Preparation and filing only).
(To be applied only to non-administered property).
One percent (1%) of the first \$100,000 of the non-administered assets of gross estate as determined for Indiana Inheritance Tax purpose, plus $\frac{3}{4}$ of 1% of the next \$150,000 of non-administered assets of said gross estate.
 $\frac{1}{2}$ of one percent (1%) on all non-administered assets of said gross estate in excess of \$250,000.
 - (3) Federal Estate Tax Returns—(To be applied only if return required because of non-administered property, to be based only on assets not listed on Indiana Inheritance Tax Schedule).
A base fee of \$750.00 or one percent (1%) of the first \$100,000.00. Of the non-administered assets of the said gross estate as determined for Federal Estate Tax purposes plus: $\frac{3}{4}$ of one percent (1%) of the next \$150,000. of non-administered assets of said gross estate, plus $\frac{1}{2}$ of one percent (1%) on all non-administered assets of said gross estate in excess of \$250,000.
 - (4) Ex parte Petitions not included under I.\$200.00
 - (5) Other than as provided aboveHourly Rate.
(Attorney's expertise in probate matters will be considered by the Court in determining the applicable hourly rate).

II. Wrongful Death Administration:

The Court recognizes that in most instances a retainer or contingent fee agreement is an appropriate method by which legal services can be provided in wrongful death claims. Accordingly, fees shall be allowed under such agreements if at the time of settlement of the claim, it is shown to the Court's satisfaction:

- (A) That the personal representative was, prior to entering such agreement, fully informed as to all aspects of the arrangement.
- (B) That the agreement is fair and reasonable.
- (C) That the fee sought is fair and reasonable.

III. In General:

(A) Extraordinary Fee Requests

Fee petitions requesting extraordinary fees must set forth services rendered with specificity. Extraordinary service may include: sale of personal property, sale of real property, partial distributions, will contest actions, contesting claims, adjusting tax matters, contested hearings, petitions for instructions, heirship determinations, generating additional income for the estate, etc.

All such petitions will be set for hearing, with notice to all interested parties. If all interested parties sign a waiver and consent stating they have been advised the additional fee request exceeds the Court's guidelines and that the services as detailed are extraordinary, the Court may, in its discretion, determine if a hearing is required.

An acceptable form of waiver is attached.

(B) Unsupervised Estates

The Court will not determine and allow fees in an unsupervised administration.

(C) Filing of Fee Petition

Before any fee is paid a petition for allowance of such fee shall be filed and determined by the Court. A request for fees will be considered only under the following circumstances:

- (1) When the Inheritance Tax Petition is ready to be filed, or
- (2) When a petition to find no tax due has been approved, or
- (3) When necessary for purposes of an estate fiduciary income tax deduction, or

(4) Under extraordinary circumstances.

(D) Payment of Fees

Except where payment has been authorized under C.3 or C.4 above, fees are payable one half (1/2) upon approval of fee petition and one half (1/2) upon approval of the Final Report.

**WAIVER AND CONSENT TO ALLOWANCE OF FEES IN EXCESS OF
GUIDELINES**

The waiver and consent is not to be merely a pro forma waiver and consent, but is to be in substantially the following form:

**IMPORTANT: PLEASE READ
BEFORE SIGNING!**

WAIVER AND CONSENT

The undersigned, an interested party in the Estate of _____ understands that:

- (A) The maximum fee ordinarily allowed by the Court for legal services in this Estate would amount to \$_____;
- (B) The Attorney has requested fees in the amount of \$_____, alleging that extraordinary and unusual services have been performed.

The undersigned, being fully advised, now consents to the allowance of the requested fee, waives any notice of hearing on the Petition and requests that the Court allow fees in the amount of \$_____.

Dated _____
Devisee/Heir

3. PERSONAL REPRESENTATIVE FEES

I. Professional:

The Court will approve their applicable prevailing rate, provided:

- (A) Said rates are on file with and approved by the Court.
- (B) The rate results in a reasonable fee in light of all circumstances.
- (C) A description of services rendered in support of a request for fees is filed.

II. Non-Professional:

Fees may be allowed not to exceed one half (1/2) the fee allowed the attorney, provided:

- (A) Said fee is reasonable in light of all circumstances.
- (B) A description of services rendered, including time spent with hourly Rate in support of said request is filed.

III. Attorney:

The Court recommends that attorneys not assume the dual role of attorney and personal representative in the same estate. When the attorney does serve as the personal representative, an additional amount not to exceed one-third (1/3) of the attorney fee may be allowed, provided:

- (A) Said fee is reasonable in light of all circumstances.
- (B) A description of services rendered, including time spent with hourly rate in support of said request is filed.

IV. In General:

The Court will apply the same procedures to the allowance and drawing of fees and to a personal representative's extraordinary fee request as it does to attorney fee requests.

Adopted August 15, 1990